IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO.430 OF 2004

IN

SUMMARY SUIT NO.1007 OF 2004

Mitul Harakchand Gada. ...Plaintiff.

Versus

Prakash Hirji Gada. ...Defendant.

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Ms.Yogini Gada i/b. Harakchand & Co. for the Plaintiff.
Mr.Kambale i/b.Ashok Saraogi for the Defendant.

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CORAM : DR. D.Y. CHANDRACHUD, J.

June 19, 2007.

P.C.:

The suit under Order 37 of the Code of Civil Procedure, 1908, has been instituted on the basis of monies lent and advanced, a promissory note and a confirmation executed by the Defendant. On 15th June 1999, the Defendant executed a promissory note agreeing to repay an amount of Rs. 1.20 lakhs to the Plaintiff together with interest at the rate of 21% per annum. That is in consideration of Rs. 1.20 lakhs advanced by the Plaintiff to the Defendant by a cheque dated 15th June 1999 drawn on the State Bank of Hyderabad.

Between 2nd July 1999 and 30th March 2002, the Defendant paid interest on the outstanding loan at the rate of 21% per annum details whereof have been furnished in para 5 of the Plaint. On 31st March 2001, the Defendant executed a confirmation of liability. Thereafter, the Defendant executed a further promissory note on 1st April 2002 in respect of the outstanding amount of Rs. 1.20 lakhs, and the amount of interest reflected therein is reduced to 18% per annum. On 8th June 2002 and 31st October 2002, interest was paid by the Defendant to the Plaintiff by cheques, details of which have been furnished in para 9 of the Plaint. A letter of demand was addressed to the Defendant on 8th September 2003 in response to which the Defendant by a reply dated 3rd February 2004 called upon the Plaintiff to forward all necessary documents on the ground that the record of the Defendant did not contain any entry of the amount as claimed from the Defendant.

A reply has been filed to the Summons for Judgment. At the hearing of the Summons for Judgment two defences have been urged. The first defence is that the suit is beyond limitation. The suit

was instituted on 15th March 2004. The Defendant had, in the meantime, executed a promissory note on 1st April 2002 agreeing to repay the amount outstanding of Rs. 1.20 lakhs with interest at the rate of 18% per annum. Prior thereto, a letter of confirmation of liability was issued on 31st March 2001. Interest was paid from time to time until 31st October 2002 on the outstanding debt. The suit is, therefore, within limitation. The second submission which was urged at the hearing was that the promissory note dated 1st April 2002 does not stipulate that it is in renewal of the earlier document. That however would not advance the case of the Defendant. Significantly, while the Defendant in the affidavit in reply denied having executed the document at Exhibit -1, there is no denial of the Defendant (i) Having executed a confirmation of liability or (ii) Having executed subsequently a promissory note dated 1st April 2002. Similarly, there is no denial of the fact that interest has been paid from time to time to the Plaintiff at the rates stipulated. There is no merit in the defence which has been urged on behalf of the Defendant.

The Plaintiff has tendered a compilation of original

documents which is taken on the record. The claim has been duly established on the basis thereof. The suit shall accordingly stand decreed in the principal amount of Rs. 1.20 lakhs. The Plaintiff shall be entitled to interest at the rate of 9% per annum from the respective due dates until the institution of the suit and at the same rate from the date of institution of the suit until payment or realisation.

The Summons for Judgment is accordingly made absolute.

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